

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CASSANDRA MAE
ZIMMERMAN and DANI GLENN
ZIMMERMAN, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TIMOTHY PAUL ZIMMERMAN,

Respondent-Appellant.

UNPUBLISHED

March 3, 2005

No. 256778

Menominee Circuit Court

Family Division

LC No. 03-000141-NA

Before: Schuette, P.J., and Fitzgerald and Bandstra, JJ.

MEMORANDUM.

Respondent appeals as of right the order terminating his parental rights to Dani Glenn Zimmerman (dob: 8/14/02) pursuant to MCL 712A.19b(3)(k)(ii).¹ We affirm.

The trial court terminated respondent's parental rights to Dani under MCL 712A.19b(3)(k)(ii). Termination under subsection (k)(ii) is appropriate if respondent abused Dani or a sibling of Dani and the abuse included criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate. Respondent pleaded guilty of first-degree criminal sexual conduct, MCL 750.520b, involving Dani's sister, Cassandra. Respondent does not contest the trial court's finding that the statutory ground for termination under MCL 712A.19b(3)(k)(ii) was established by clear and convincing evidence. Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court must order termination of parental rights unless the court finds from the evidence that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich

¹ Respondent's parental rights to his adopted daughter, Cassandra Mae Zimmerman (dob: 9/10/89), were also terminated. In his brief on appeal, respondent does not contest termination of his parental rights to Cassandra. Rather, he contests the termination of his parental rights to Dani.

341, 353; 612 NW2d 407 (2000). Where appropriate, this Court reviews for clear error the trial court's decision regarding the child's best interest. *Id.* at 356-357.

Respondent argues that no evidence was presented to support a finding that termination of his parental rights was in Dani's best interest. But no such evidence was required. Neither party has the burden of producing evidence on the best interests of the child or proving whether termination is in the child's best interests. *Trejo, supra* at 352. In fact, the trial court is not even required to make any findings regarding the child's best interests. *Id.* at 357. Rather, MCL 712A.19b(5) simply provides a mechanism for the trial court to avoid termination where it finds, from the evidence on the whole record, that termination is clearly not in the child's best interests. *Id.* at 353-354. Thus, even though not required to provide factual findings in support of the decision to terminate parental rights, the court made affirmative findings with regard to the court's decision to terminate respondent's parental rights. The trial court's findings are not clearly erroneous, *id.* at 354, 356-357, and the trial court did not clearly err in terminating respondent's parental rights. *Id.*

Affirmed.

/s/ Bill Schuette
/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra